

1-1 By: Schwertner S.B. No. 404  
 1-2 (In the Senate - Filed February 6, 2013; February 13, 2013,  
 1-3 read first time and referred to Committee on Health and Human  
 1-4 Services; March 13, 2013, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
 1-6 March 13, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 404 By: Schwertner

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to complaints filed with the Texas State Board of  
 1-22 Pharmacy; authorizing fees.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 555.005, Occupations Code, is amended to  
 1-25 read as follows:

1-26 Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint  
 1-27 received by the board, the board shall maintain information about  
 1-28 parties to the complaint, including the complainant's identity, the  
 1-29 subject matter of the complaint, a summary of the results of the  
 1-30 review or investigation of the complaint, and the [its] disposition  
 1-31 of the complaint.

1-32 SECTION 2. Section 555.007, Occupations Code, is amended by  
 1-33 adding Subsection (d) to read as follows:

1-34 (d) The board may not consider or act on a complaint  
 1-35 involving a violation alleged to have occurred more than seven  
 1-36 years before the date the complaint is received by the board.

1-37 SECTION 3. Section 565.056, Occupations Code, is amended by  
 1-38 amending Subsection (b) and adding Subsections (d) and (e) to read  
 1-39 as follows:

1-40 (b) A rule adopted under this section must:

1-41 (1) provide the complainant, if applicable and  
 1-42 permitted by law, and the license holder an opportunity to be heard;  
 1-43 ~~and~~

1-44 (2) require the presence of an attorney to advise the  
 1-45 board or a board employee; and

1-46 (3) if an informal meeting will be held, require  
 1-47 notice of the time and place of the informal meeting to be given to  
 1-48 the license holder not later than the 45th day before the date the  
 1-49 informal meeting is held.

1-50 (d) The notice required by Subsection (b)(3) must be  
 1-51 accompanied by a written statement of the nature of the allegations  
 1-52 against the license holder and the information the board intends to  
 1-53 use at the informal meeting. If the board does not provide the  
 1-54 statement or information when the notice is provided, the license  
 1-55 holder may use that failure as grounds for rescheduling the  
 1-56 informal meeting. The license holder must provide to the board the  
 1-57 license holder's rebuttal not later than the 15th day before the  
 1-58 date of the meeting in order for that information to be considered  
 1-59 at the meeting.

1-60 (e) On request by a license holder under review, the board

2-1 shall make a recording of the informal meeting. The recording is a  
2-2 part of the investigative file and may not be released to a third  
2-3 party unless authorized under this subtitle. The board may charge  
2-4 the license holder a fee to cover the cost of recording the meeting.  
2-5 The board shall provide a copy of the recording to the license  
2-6 holder on the license holder's request.

2-7 SECTION 4. Subchapter B, Chapter 565, Occupations Code, is  
2-8 amended by adding Section 565.060 to read as follows:

2-9 Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and  
2-10 establish the terms of a remedial plan to resolve the investigation  
2-11 of a complaint relating to this subtitle.

2-12 (b) A remedial plan may not be imposed to resolve a  
2-13 complaint:

- 2-14 (1) concerning:
  - 2-15 (A) a death;
  - 2-16 (B) a hospitalization;
  - 2-17 (C) the commission of a felony; or
  - 2-18 (D) any other matter designated by board rule; or

2-19 (2) in which the appropriate resolution may involve a  
2-20 restriction on the manner in which a license holder practices  
2-21 pharmacy.

2-22 (c) The board may not issue a remedial plan to resolve a  
2-23 complaint against a license holder if the license holder has  
2-24 entered into a remedial plan with the board in the preceding 24  
2-25 months for the resolution of a different complaint relating to this  
2-26 subtitle.

2-27 (d) If a license holder complies with and successfully  
2-28 completes the terms of a remedial plan, the board shall remove all  
2-29 records of the remedial plan from the board's records on the fifth  
2-30 anniversary of the date the board issued the terms of the remedial  
2-31 plan.

2-32 (e) The board may assess a fee against a license holder  
2-33 participating in a remedial plan in an amount necessary to recover  
2-34 the costs of administering the plan.

2-35 (f) The board shall adopt rules necessary to implement this  
2-36 section.

2-37 SECTION 5. (a) Sections 555.005 and 565.056, Occupations  
2-38 Code, as amended by this Act, and Subsection (d), Section 555.007,  
2-39 Occupations Code, as added by this Act, apply only to the  
2-40 investigation of a complaint filed on or after the effective date of  
2-41 this Act. The investigation of a complaint filed before that date  
2-42 is governed by the law in effect on the date the complaint was  
2-43 filed, and that law is continued in effect for that purpose.

2-44 (b) The Texas State Board of Pharmacy shall adopt rules  
2-45 under Section 565.060, Occupations Code, as added by this Act, not  
2-46 later than January 1, 2014.

2-47 (c) Section 565.060, Occupations Code, as added by this Act,  
2-48 applies only to a complaint under Subtitle J, Title 3, Occupations  
2-49 Code, filed on or after the effective date of this Act. A complaint  
2-50 under Subtitle J, Title 3, Occupations Code, filed before that date  
2-51 is governed by the law in effect on the date the complaint was  
2-52 filed, and that law is continued in effect for that purpose.

2-53 SECTION 6. This Act takes effect September 1, 2013.

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